

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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| ePLUS INC., |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 3:09-CV-620 (REP) |
| |) | |
| v. |) | |
| |) | |
| LAWSON SOFTWARE, INC., |) | |
| |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFF *ePLUS INC.*'S REBUTTAL PROPOSED FINDINGS OF FACT IN
SUPPORT OF MOTION FOR PERMANENT INJUNCTION**

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I. INTRODUCTION

Pursuant to Fed. R. of Civ. P. 65 and 35 U.S.C. § 283, and this Court’s Order of March 11, 2011, *ePlus, Inc.* (“*ePlus*”) respectfully submits the following rebuttal proposed findings of fact in support of its motion for a permanent injunction against Defendant Lawson Software, Inc.’s (“Defendant’s”) continuing direct and indirect infringement of claims 3, 26, 28, and 29 of U.S. Patent No. 6,023,683 (or, “the ‘683 Patent”); and claim 1 of U.S. Patent No. 6,505,172 (or, “the ‘172 Patent”).

II. PROPOSED FINDINGS OF FACT

A. Lawson’s Revenues For The Infringing Systems

1. In addition to revenues from licensing the infringing systems, Lawson generates revenue from the implementation, maintenance and support, training and consulting services relating to the infringing systems. White Dep. 52:22-54:21; 59:3-16, Oct. 26, 2009; PX440 (Lawson 2010 Form 10-K) at 5. The service and maintenance revenues often exceed the revenues received from licensing. White Dep. 58:12-20, Oct. 26, 2009; PX440 (Lawson 2010 Form 10-K) at 32. From November 2003 until March 2010, Lawson generated \$271 million in revenues for maintenance of systems that included the infringing products. PX509 (Rule 1006 Summary of Lawson’s Accused Maintenance Revenue). From November 2003 until March 2010, Lawson generated \$245 million in revenue for services related to systems that included the infringing products; PX510 (Rule 1006 Summary of Lawson’s Accused Service Revenue).

B. Procure+ and Content+ As Components of *ePlus*’s Business

2. A significant portion of *ePlus*’s revenue is obtained from its VAR business, which sells IT hardware and software that is not manufactured by *ePlus*. Inj. Hr’g Tr. (Farber) 46:18-25; 153:16-154:3. As a result, *ePlus*’s overall profit margin is only around 10%. *Id.*

3. As of March 31, 2010, *ePlus* had a total of 661 employees. PX523 (*ePlus* 2010

Form 10-K) at 23. At least 50 of these employees were employed by *ePlus Systems and Content Services.* *Id.*

C. The Electronic Procurement Market

4. Both “best of breed” e-procurement vendors and ERP providers compete in the e-procurement marketplace for the same customers. *See, e.g., PX463 (Procurement and Sourcing Applications Report, 2005-2010) at LE216136 (“Companies with procurement applications include Ariba, ePlus . . . Lawson, Oracle . . . SAP, SciQuest . . .”); PX690 (The Forrester Wave: eProcurement Solutions, Q1 2011) at 5 (listing Ariba, SAP, Oracle, Lawson, Perfect Commerce, SciQuest and Verian Technologies).*

5. Lawson itself views best of breed e-procurement vendors as competitors for its e-procurement solution:

In the best-of-breed market, our competitors will vary depending upon the type of solution required.

- Sourcing/Contract Management/e-Procurement – Ariba, Emptoris, Ketera, Perfect Commerce, Procuri, SciQuest and Upside

* * *

ERP vendors are also potential competitors in each of these areas, but only in the initial full-suite deal.

* * *

How Lawson Wins

- By delivering a simpler, easier to use solution that has unique features for our target industries
- Strong reference customers
- Lower total cost of ownership
- Positioning complete solution vs. best of breed

More and more, our customers and prospects are looking to their ERP provider for additional supply chain management solutions – particularly for sourcing, contract management and mobile applications. This is putting pressure on much of our best-of-breed competitors. Even in cases where we lose deals now, Lawson can expect to have an opportunity to replace the best of breed vendor in 3-5 years.

PX692 at LE00264024 (S3 Supply Chain Management Marketing Plan, FY08) at 15.

Best of Breed SRM Competitors

SRM competitors typically provide solutions focused around e-Procurement processes, often for indirect goods and services. Solutions are often on-demand, allowing organizations to subscribe for this functionality. Ariba pioneered this space, offering solutions for sourcing, e-procurement, contract management and spend analysis.

Best of breed competitors include:

- Ariba
- Emptoris
- Ketera
- Perfect Commerce
- Procuri
- SciQuest
- Upside

When competing against these best of breed solutions, Lawson should position how our solutions are integrated with Lawson's other applications, allowing for integrated source to settle processes.

Id. at 19.

SCM applications from ERP providers continue to gain traction in terms of spending growth and market share which is good news for Lawson. However, rather than coming at the expense of best-of-breed applications, users are beginning to shift away from internally developed applications to packaged SCM applications provided by ERP and best-of-breed providers .

Id. at 11.

6. Ariba is an example of a best of breed e-procurement vendor against whom Lawson often competes. Inj. Hr'g Tr. (Hager) at 194:10-14 (describing Ariba as the “most famous” best-of-breed e-procurement provider). Several Lawson employees confirmed that Ariba is one of Lawson’s primary competitors. Lohkamp Dep. 66:5-14, Oct. 20, 2009 (Lawson reviews Ariba’s website for the content associated with its products); *id.* at 81:3-12 (Lawson maintains a “competitor file” tracking Ariba); Hager Dep. 53:3-9, Oct. 16, 2009 (Lawson competes with Ariba in the marketplace for business); Frank Dep. 30:7-10, Oct. 9, 2009 (Lawson competes with Ariba).

7. *ePlus sells Procure+ and Content+ as standalone products, which are then integrated into an ERP system.* Inj. Hr'g Tr. 49:17-50:1 (Farber) (“There probably isn’t a customer that we have that we have not integrated into an ERP system. It’s a requirement with procurement today.”).

8. Defendant sells ERP systems in which e-procurement modules, such as Procure+ and Content+, can be integrated. Inj. Hr'g Tr. 49:17-50:1 (Farber); 191:9-20; 223:5-224:1; 256:2-17 (Hager); Trial Tr. 1075:11-1076:21 (Lohkamp); Trial Tr. 1338:19-1340; 1346:15-1347:2 (Farber). Lawson offers its procurement suite as a standalone product to integrate into its existing ERP system. PX500LLL2 (Lawson Response to RFI from State of Michigan seeking e-procurement system) at L0118110; PX500AA (Lawson Response to RFP from Deaconess Hospital for material management system) at LE00171782; Inj. Hr'g Tr. (Hager) 206:2-8. Other e-procurement vendors, such as *ePlus*, may also offer to integrate their procurement software into Lawson’s ERP system. PX146 (Email from W. Thomas to P. Halpern et al. attaching *ePlus* Response to Novant Health Procure to Pay System); PX249 (Email from P. Burton to D. Magoon et al. re Novant Responses to RFP Questions); PX298 (*ePlus* Response to RFP from Novant Health, Appendix A).

9. Lawson markets its Requisitions Self-Service and Procurement Punchout applications as individual products. Lawson publicizes its Requisition Self-Service and Procurement Punchout modules as its “Web-based Requisitioning” solution. PX689 (Lawson Web-Based Requisitioning). Lawson also uses webinars to demonstrate its Requisitions Self-Service and Procurement Punchout applications to customers and prospects. PX101 (Empower Your People with Requisition Self-Service and Procurement Punchout); Lohkamp Dep. Tr. 199:18-200:21, Oct. 20, 2009; *see also* Trial Tr. 994:1-8 (Lohkamp) (examples of supply-chain

management applications in the Lawson suite include Requisition Self-Service and Procurement Punchout).

D. Competition Between ePlus And Defendant

10. ePlus, like Lawson, also focuses on the healthcare and public-sector industries. Current and former healthcare customers include Deaconess Hospital; Eastern Virginia Medical School; and Affordable Care, Inc. *See* Pl.'s Rule 26 Supp. Disclosure at App. C and PX659 (ePlus Client Implementation Status spreadsheet). Current and former public-sector customers include Riverside County, California; Santa Clara County, California; Washington Dept. of Labor; and Fresno County, California. *See* Pl.'s Rule 26 Supp. Disclosure at App. C, PX647 (ePlus Billing Systems spreadsheet), and PX659 (ePlus Client Implementation Status spreadsheet). ePlus has solicited its patented Procure+ and Content+ products to hundreds of other potential customers in the health care and government industries. *See* Pl.'s Rule 26 Supp. Disclosure at Apps. A and B.

E. ePlus Has Lost Sales Because Of Defendant's Infringing Software Products

11. Deaconess licenses both Lawson Requisitions Self-Service and Procurement Punchout. Inj. Hr'g Tr. (Hager) 206:14-17; Inj. Hr'g Tr. (Lawson Counsel) 208:3-4 ("I have a note here indicating actually Deaconess does have the Punchout product.").

12. On August 16, 2010, in response to a solicitation ePlus made to LHC Group regarding its e-procurement solution, LHC informed ePlus that it had selected Lawson for its procurement system:

Thanks for your email and it is great hearing from you. **LHC has selected Lawson as its procurement application.** We will keep your information on file but we are in month two of this implementation.

PX564 (Email from A. Simien to D. Milito) (emphasis added).

13. On October 1, 2010, ePlus received an email from PPDI stating that PPDI had

selected Lawson Requisitions Self-Service over *ePlus Procure+*:

Our group has evaluated Procure+ cost and implementation vs. Lawson RSS cost and implementation. ***We remain committed to Lawson.*** The ongoing cost of Procure+ (and later eProcure) plus the internal ongoing cost of maintaining the Lawson interface was a factor. The review of Procure+ reminded us that our Project Global is based on the maximization of our Lawson investment and the commitment to have all financial information in one system. That became the over riding factor.

PX575 (Email from T. McGraw to P. Norton) (emphasis added).

F. Irreparable Harm And Inadequacy Of Remedy At Law To *ePlus*

14. Beginning around 2002 and continuing for the next several years, *ePlus* was heavily involved in patent litigation and other matters. Inj. Hr'g Tr. (Farber) 147:18 – 149:6; 154:4-155:7. As a result, *ePlus* did not have the resources to investigate whether Lawson was infringing its patents until around 2009. *Id.*

15. Oracle Corp. is expected to make a offer to purchase all outstanding shares of Defendant's stock. PX694 (Tara Lachapelle, *Oracle Seen Buoying Icahn with Lawson Software Offer: Real M&A*, BLOOMBERG, Mar. 29, 2011) (available at <http://www.bloomberg.com/news/2011-03-29/oracle-seen-buoying-icahn-with-lawson-software-offer-real-m-a.html>). This offer will exceed the offer already received from Infor for roughly \$1.8 billion. *Id.*

III. CONCLUSION

Based on the full evidentiary record at trial and at the evidentiary hearing on the injunction, *ePlus* respectfully moves that the Court adopt these rebuttal proposed findings of fact.

Respectfully submitted,

April 1, 2011

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April, 2011, I will electronically file the foregoing

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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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